

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

09/04/2001

CLERK OF THE COURT  
FORM L513

HONORABLE MICHAEL D. JONES

T. Pavia  
Deputy

LC 2001-000069

FILED: SEP 19 2001

STATE OF ARIZONA

DIANA C HINZ

v.

JOSEPH GREGORY FLORES

MICHAEL J DEW

PHX MUNICIPAL CT  
REMAND DESK CR-CCC

**APPEAL RULING / REMAND**

**Phoenix City Court**

**Cit. No. 5885246**

**Charge: DUI, DUI W/AC OF .10 OR HIGHER; EXTREME DUI**

**DOB: 10-26-76**

**DOC: 03-13-00**

This Court has jurisdiction of this Appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the Phoenix City Court and Memoranda of counsel.

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Appellant was arrested March 13, 2000 and charged with Driving While Under the Influence of Intoxicating Liquor in violation of A.R.S. 28-1381(A)(1); Driving With a Blood Alcohol Concentration of .10 or higher within 2 hours of driving in violation of A.R.S. 28-1381(A)(2); and Driving With an Alcohol Concentration of .18 or higher within 2 hours of driving in violation of A.R.S. 28-1382(A), all class 1 misdemeanors. Appellant filed a Motion to Suppress the breath test and to dismiss all charges. This Motion was heard February 1, 2001 by the Hon. Cynthia Certa of the Phoenix Municipal Court. Judge Certa denied Appellant's Motion and both parties then submitted the case to Judge Certa on the basis of the police departmental reports. Judge Certa found Appellant guilty on all three charges and sentenced Appellant to pay a fine of \$443.00, serve 30 days in jail (20 days to be spend suspended pending successful completion by Appellant of a substance abuse screening and any counseling, therapy or education which may be required), the costs of incarceration, and a substance abuse screening fee. Appellant filed a timely notice of appeal.

The only issued raised by Appellant concerns the trial judge's denial of his Motion to Suppress the results of the breath tests. Appellant claims that he was denied his rights of due process under the United States and Arizona Constitutions. Appellant claims that he was denied information and data critical to his defense by the failure of the State to preserve data from calibration checks and reference checks on an electronic data base. Appellant's claim is based upon the fact that the Department of Public Safety had up until December 15, 1999 stored data of all calibration checks and reference checks performed upon Intoxilizer 5000 machines in a data base named the ADAMS system. Beginning January 12, 2000, the data was stored in a new system called the COBRA system. These data bases stored information from each and every Intoxilizer 5000 in use, including calibration checks, any errors which occurred on that particular machine, and reference checks done before and after subject (suspect) tests. Therefore, for a period of less

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than one month, electronic data of calibration checks, records of errors on a particular machine, and the reference checks done before and after the subject tests were not stored on a state-wide data base. However, though the information was not stored on an electronic data base, hard copies exist showing calibration checks, function and accuracy checks.

As a preliminary matter, this Court notes that the trial court's ruling on issues pertaining to admissibility of evidence such as in the context of a hearing on a Motion to Suppress will not be overturned on an appeal absent a showing that the trial judge abused his or her discretion.<sup>1</sup> This court must give great deference to the trial court's factual findings, including findings regarding witnesses' credibility and the reasonableness of inferences drawn from the witnesses' testimony.<sup>2</sup> An appellate court must view those facts in a light most favorable to upholding the trial court's decision, resolving reasonable inferences against the Appellant.<sup>3</sup> The trial judge is in the most optimal position of understanding and applying the evidence before it. And only when a trial judge's factual finding is not justified or is clearly against reason in the evidence, will an abuse of discretion be found.<sup>4</sup>

In this case, the trial judge denied Appellant's Motion and found specifically that the State had not acted in bad faith. There is nothing in the record that would indicate abuse of

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<sup>1</sup> State v. Rogers, 186 Ariz. 508, 924 P 2d. 1027 (1996).

<sup>2</sup> State v. Gonzales-Gutierrez, 187-116, 927 P 2d. 776(1996); State v. Magner, 191 Ariz. 392, 956 P 2d. 519 (App. 1998).

<sup>3</sup> State v. Guerra, 161 Ariz. 289, 778 P 2d. 1185 (1989); State v. Smith, 136 Ariz. 273, 665 P 2d. 995 (1983).

<sup>4</sup> State v. Chapple, 135 Ariz. 281, 660 P 2d. 1208 (1983); State v. Magner, supra.

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discretion. In fact, the existence of hard or tangible written documents evidencing calibration and reference checks would support the trial judge's ruling.

Appellant also argues that the loss of the data from the computer data base might have been the loss of exculpatory evidence favorable to the defense. Unfortunately, the Appellant has engaged in mere speculation. This court must reject such speculation as not showing that the State destroyed or failed to preserve evidence favorable to the defense.

IT IS THEREFORE ORDERED finding sufficient information in the record which supports the trial judge's ruling denying Appellant's Motion to Suppress. Such ruling was not contrary to law.

IT IS ORDERED affirming the Judgments and Sentences in this case.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all future proceedings.